

§ 10.320

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to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

DIRECTED MEDICAL EXAMINATIONS

§ 10.320 Can OWCP require an employee to be examined by another physician?

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless there is rationalized medical evidence that establishes that someone else is needed in the room or OWCP decides that exceptional circumstances exist. Where an employee requires an accommodation, such as where a hearing-impaired employee needs an interpreter, the presence of an interpreter will be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

§ 10.321 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

(a) If one medical opinion holds more probative value, OWCP will base its determination of entitlement on that medical conclusion (see § 10.502). A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions (see *James P. Roberts*, 31 ECAB 1010 (1980)).

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see § 10.502). This is called a referee or impartial examination. OWCP will select a physician who is qualified in the appropriate

specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee or impartial medical review where there is no need for an actual examination, or where the employee is deceased.

§ 10.322 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

§ 10.323 What are the penalties for failing to report for or obstructing a second opinion or referee examination?

(a) If an employee refuses to submit to or in any way obstructs an examination required by OWCP, including testing such as functional capacity determinations conducted in connection with an OWCP-directed medical examination, his or her right to compensation under the FECA is suspended under 5 U.S.C. 8123(d) until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

(b) If the employee does not report for an OWCP-directed examination or in any way obstructs this examination, he or she may provide an explanation to OWCP within 14 days. If this explanation does not establish good cause for the employee's actions, entitlement to compensation will be suspended in accordance with 5 U.S.C. 8123(d). Should the employee subsequently